

established by the Court for the protection of its suitors from unreasonable vexation; as by giving to his bill such a disjunctive frame and alternative prayers, as, that it may be treated either as a bill of review, or as a bill of revivor and supplement, so as thereby to elude the protective operation of those rules by which a party is restrained from filing a bill of review at his pleasure. *Perry v. Phelps*, 17 Ves. 176. And as a plaintiff must state a clear case of equitable jurisdiction, much less can he be permitted to call on the Court to act upon a hypothetical bill praying relief, either at law or in equity; since he must distinctly determine for himself whether his case is at law or in equity. *Edwards v. Edwards*, Jac. Rep. 335. But it is not irregular to bring a bill in which the case, taken in any way, being within the jurisdiction of a Court of equity, is stated in the disjunctive or with two different aspects; so that if the plaintiff fails to sustain by his proof the one alternative, he may, by authenticating the other, obtain the relief he seeks. *Oresset v. Kettleby*, 1 Vern. 219; *Bennett v. Vade*, 2 Atk. 325; *Jones v. Jones*, 3 Atk. 111. Here, however, the alternative presented to the Court is that of a conveyance in trust; or an absolute sale, with an incident equitable lien; so that, whether the plaintiffs sustain by their proof the one alternative or the other, they have, by their bill, presented a case which, without invading any rule, comes entirely within the cognizance of a Court of equity.

But the originally contracting parties were both of them dead when this bill was filed. The plaintiffs are the legal representatives of James M. Ligan, deceased; and the defendants legally represent the late John Henderson. The rights, as well as the liabilities, under this contract, have thus passed into other hands and devolved \* upon other persons. The plaintiffs derive  
**253** their right to the thing in controversy from James M. Ligan; they stand exactly in his place, and can all of them together claim nothing more than what might have been demanded by him. Any one of them may assign, or release his or her own undivided right, so far as it extends, without prejudice to the others; which transfer would, however, only operate so as to substitute the assignee for the assignor; and consequently this contract, as stated in the bill, is as entire and as utterly indivisible, as these plaintiffs have succeeded to it, as it was in the hands of James M. Ligan, the originally contracting party.

Then, on the other hand, the liability to which John Henderson was subject, by this contract, has devolved upon these defendants as his legal representatives. Considering it as a conveyance in trust, his administratrix is liable for the rents and profits, as for so much personalty, gathered by her intestate from the real estate which had been so conveyed: and his heirs are liable; because that real estate itself has, by operation of law, been cast upon